

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

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IN THE MATTER OF: )  
 )  
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**Murphy Oil USA, Inc.** )  
Montgomery, Montgomery County, Alabama )

ADEM Permit No. 209-0030 )  
\_\_\_\_\_ )

**CONSENT ORDER**

No. \_\_\_\_\_

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Murphy Oil USA, Inc. (hereinafter, "Murphy") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. Murphy is the permitted owner and/or operator of a gasoline bulk terminal (hereinafter, "Terminal") located in Montgomery, Montgomery County, Alabama. Murphy operates this facility under the authority of ADEM Air Permit 209-0030.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16, (2006 Rplc. Vol.).

3. Pursuant to Ala. Code §22-22A-4(n), (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42

U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, (2006 Rplc. Vol.).

4. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.).

5. ADEM Admin. Code r. 335-3-6-.07 (5)(b) states:

Sources affected under paragraph (2) of this Rule may not allow the disposal of waste gasoline in sewers, open containers or in a manner that would result in evaporation.

6. ADEM Admin. Code r. 335-6-8-.05(1)(a) prohibits:

The discharge of fluids and/or pollutants to ground water and/or soils, which may result in a discharge of fluids and/or pollutants to ground water which is not authorized by and in compliance with a permit issued under the provisions of this chapter, the Alabama Hazardous Waste and Minimization Act or ADEM Administrative Code division 335-14 (Hazardous Waste Program) or other chapter of the ADEM Administrative Code.

7. ADEM Admin. Code r. 335-3-14-.01 (1)(a) states:

Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

8. ADEM Admin. Code r. 335-3-14-.01 (1)(e) states:

The Director shall have the authority to decide cases where an article, machine, equipment, or other contrivance is not clearly subject to nor

exempt from the application of this Rule. In addition, the Director may rule that a particular article, machine, equipment, or other contrivance is subject to the application of this Rule even though it is exempt from the system according to subparagraph (a) of this paragraph and paragraph (5) of this Rule....

9. On July 23, 2009, free product was found in monitoring well #2 at the Terminal during a routine groundwater monitoring event.

10. Murphy investigated the leak, determining that product was leaking from the underground vapor recovery return pipe associated with AST6, and initiated assessment and remediation measures.

11. After consultation with Murphy, the Department approved an initial work plan ("Plan") proposed by Murphy to investigate and assess the horizontal and vertical extent of soil and groundwater contamination, and to remediate the release.

12. Murphy submitted a 45-Day Response Report on September 28, 2009, that provided a detailed description of the horizontal and vertical extent of the soil and groundwater contamination as determined by the investigation and assessment activities, an update of the Plan with the status of the remedial technologies implemented, and the associated equipment installed at the site. Subsequent progress reports were submitted in November and December 2009.

13. On December 3, 2009, Murphy submitted an updated Plan that addressed the status of remediation of the release.

#### ***ADEM CONTENTIONS***

14. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State

resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

15. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS: Murphy failed to maintain equipment associated with the vapor recovery unit in a manner to prevent leaks and emissions from occurring. The Department has considered the seriousness of the alleged incidents and has determined that this Consent Order is appropriate to address the incidents.

B. THE STANDARD OF CARE: Murphy did not exhibit a standard of care commensurate with the applicable rules and regulations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: While Murphy may have incurred some economic benefit from the violations set forth herein, the Department is not able to quantify such benefit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Following discovery of the Montgomery Terminal release, Murphy secured the services of an environmental contractor to begin assessment and remediation.

E. HISTORY OF PREVIOUS VIOLATIONS: Murphy has not been subject to any formal air quality violation enforcement actions at the Terminal by the Department within the last five years.

F. THE ABILITY TO PAY: Murphy has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department and Murphy have reached a compromise regarding the amount of the penalty warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

#### ***MURPHY CONTENTIONS***

16. Murphy does not agree with certain allegations and contentions of Department as presented in this Consent Order, and denies that it violated the cited ADEM Administrative Code Rules (“Rules”) incident to said allegations, and denies any liability for administrative penalties related to or arising from the allegations or any alleged violation of the cited Rules. However, in the spirit of cooperation and with the desire to avoid the burden, expense and uncertain outcome of litigation of an enforcement action, to amicably resolve and settle all matters of dispute between Murphy and the Department, and with the desire to comply with applicable environmental rules and regulations, Murphy does not contest this Consent Order and

agrees to abide by the terms of the following Order and to pay the civil penalty assessed herein.

***ORDER***

THEREFORE, both Murphy and the Department desire to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Murphy agree to enter into this ORDER with the following terms and conditions:

A. Murphy agrees to pay to the Department a civil penalty in the amount of \$90,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Murphy agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. Murphy agrees to continue to implement all investigative, remediation and corrective action plans detailed in submittals to the Department until

released in writing from these requirements by the Department either individually or collectively.

D. Murphy agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.07 (5) (b), ADEM Admin. Code r. 335-3-14-.01 (1) (a), ADEM Admin. Code r. 335-3-14-.01 (1) (e) and Admin Code r. 335-6-8-.05 (1) (a), immediately upon the effective date of this Consent Order and continuing every day thereafter.

E. Notwithstanding any other provision herein, Murphy agrees to and is ordered to do the following:

(1) Continue soil and groundwater assessment activities necessary to delineate the horizontal and vertical extent of the soil and groundwater contamination. Murphy shall address any deficiencies in these assessment activities upon notification and within a time frame identified by the Department.

(2) Murphy shall continue to conduct activities necessary to mitigate further impacts to soil, groundwater and all potential downgradient receptors. Murphy shall address any deficiencies in these efforts upon notification and within a time frame identified by the Department.

(3) That, within ninety days of the effective date of this Consent Order Murphy shall develop and submit to the Department a final work plan that identifies all soil and groundwater assessment activities necessary to determine the horizontal and vertical extent of the soil and groundwater contamination. The final work plan should include detailed descriptions of all boring activities, monitoring well installation activities, well development, purging and sampling activities, quality assurance/quality

control activities, and a schedule of implementation. Such schedule of implementation shall include timeframes for completion of required activities and target dates for submittals identified in this Paragraph. Should it be necessary, Murphy may propose modifications to this schedule which will be subject to the approval of the Department. The final work plan also shall include the sampling of all monitoring wells required by the Department on a quarterly basis for Volatile Organic Compounds, including Benzene, Toluene, Ethyl Benzene, Xylene, Methyl Tertiary Butyl Ether, Polynuclear Aromatic Hydrocarbons and Total Lead. Analytical parameters and representative wells may be modified upon approval by the Department. Murphy shall modify the final workplan to address any deficiencies upon notification and within a time frame identified by the Department.

(4) That monthly progress reports documenting all activities conducted pursuant to this Paragraph shall be submitted to the Department by the seventh work day of each month until the Department releases Murphy from this requirement in writing.

(5) That quarterly reports documenting all investigations and remediation activities conducted pursuant to this Paragraph shall be submitted to the Department by the fifteenth work day of each quarter, including all maps (potentiometric, isoconcentration, and topography), boring logs, monitoring well diagrams, analytical data for soil and groundwater, copies of the laboratory reports and quality assurance/quality control procedures performed, and any proposed modifications to schedule of implementation, subject to approval by the Department. Upon written notice by the Department, this reporting frequency may be reduced to semi-annual.

(6) A final Assessment Report shall be submitted to the Department in



accordance with the schedule identified in Section (3) of this Paragraph, which shall include documentation of all activities conducted and all maps, boring logs, monitoring well diagrams, analytical data, copies of the laboratory reports and quality assurance/quality control procedures performed (Reference Figure 1 in the Alabama Environmental Investigation and Remediation Guidance document). Murphy shall address any deficiencies in completion of the Assessment or the Assessment Report upon notification and within a time frame identified by the Department.

(7) The final Corrective Action Plan shall be developed and submitted to the Department in accordance with the schedule identified in Section (3) of this Paragraph, which documents all remediation actions necessary to mitigate impacts to soil, groundwater and all potential receptors. Murphy shall address any deficiencies in the Remediation Plan upon notification and within a time frame identified by the Department.

(8) The Corrective Action Plan shall be fully implemented and operational in accordance with the schedule identified in Section (3) of this Paragraph. Murphy shall notify the Department, in writing, upon completion of this requirement.

(9) That Murphy shall continue implementation of the Corrective Action Plan until notified otherwise by the Department. Murphy shall address any deficiencies in Implementation of the Corrective Action upon notification and within a time frame identified by the Department.

(10) That Corrective Action Effectiveness reports shall be submitted to the Department on a semi-annual basis and shall include an evaluation of the effectiveness of the remediation systems, all soil and groundwater analytical data (including all

original laboratory reports), all maps (potentiometric and isoconcentration), and concentration trend analyses. Murphy shall address any deficiencies in Corrective Action Effectiveness Reports upon notification and within a time frame identified by the Department.

(11) That the Department may require modification of the corrective action program should the Department determine from Corrective Action Effectiveness reports that the existing remediation program is inadequate.

(12) In accordance with the schedule identified in Section (3) of this Paragraph, Murphy shall conduct a risk assessment and submit to the Department a Risk Assessment Report to determine corrective action limits for soil and groundwater. Murphy shall address any deficiencies in the Risk Assessment or Risk Assessment report upon notification and within a time frame identified by the Department.

F. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. Subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. Murphy agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, Murphy agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Murphy also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Murphy shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Murphy, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Murphy) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Murphy, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The Department and Murphy agree that the sole purpose of this

Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. After the Effective Date of this Consent Order, if additional facts and circumstances set out herein are discovered that the Director alleges constitute a violation not addressed in this Consent Order, the Director may initiate administrative action(s), litigation and/or impose such other enforcement action(s) as may be appropriate and authorized by applicable law or regulation. With regard to any such future order(s), litigation, or other enforcement action(s) which address a violation not raised in this Consent Order, Murphy is not precluded from raising any defense it may have available except that Murphy may not raise the issuance of this Consent Order as a defense.

K. The Department and Murphy agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Murphy does hereby waive any hearing on the terms and conditions of same.

L. The Department and Murphy agree that this Order shall not affect Murphy's obligation to comply with any Federal, State, or local laws or regulations.

M. The Department and Murphy agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

N. The Department and Murphy agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental

Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The Department and Murphy agree that any modifications of this Order must be agreed to in writing signed by both parties.

P. The Department and Murphy agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Murphy of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MURPHY OIL USA, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
Tom McKinlay  
Senior Vice President

\_\_\_\_\_  
John P. Hagood  
Director

Date Signed:\_\_\_\_\_

Date Executed:\_\_\_\_\_